

facts regarding the sale in execution of his property therefore cannot serve to establish a *prima facie* case against Standard Bank.

72 Indeed, there is not a single allegation in either the founding affidavit or in the draft particulars of claim directed specifically at Standard Bank.

73 It is not even clear from the papers whether any of the applicants are Standard Bank customers, and if so, what the circumstances relating to their properties having been sold in execution were.

74 It is impossible, without being provided with the identity number and/or home loan number of the applicants for Standard Bank to determine whether a particular person held a home loan with it and whether legal steps were instituted against that person pursuant to a default.

75 As explained at the outset, Standard Bank's attorneys have repeatedly sought this information from the applicant's legal representatives. This correspondence is referred to at paragraph 20.

76 In any event, based on the general practice that Standard Bank follows in the event of default on a home loan account, up to and including the sale of the property – which I detail below – I submit that there can be no *prima facie* case on the facts against Standard Bank.

77 It is certainly not true that Standard Bank sells properties in execution without taking reasonable steps. Standard Bank offers numerous arrangements to

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customers who are experiencing difficulties in maintaining their monthly loan repayments, including:

77.1 special arrangements to pay the arrears over stipulated periods of time (often referred to as "*rehabilitation*");

77.2 payment holidays in the event of a consumer, *inter alia*, having been retrenched or going on maternity leave and provided certain criteria are met;

77.3 restructuring and/or rescheduling the monthly instalments, in the event that the consumer has missed three or more payments;

77.4 voluntary or statutory debt review processes;

77.5 debt consolidation, where Standard Bank offers to consolidate a number of the over-indebted consumer's credit products that are in arrears into a new consolidated credit product such as a loan;

77.6 surrendering of collateral where appropriate;

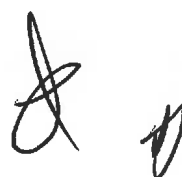
77.7 bank assisted sales programs (willing buyer/willing seller) for consumers to sell their properties privately; and

77.8 indulgences extended to the consumer to sell their properties via private treaty, often with the help of a reputable estate agent.

78 These various arrangements are generally available right up until the sale in execution (including after the order authorizing a sale in execution has been granted).



- 79 Standard Bank is not in the business of selling immovable property, and sales in execution are generally a matter of absolute last resort.
- 80 Sales in execution generally only occur where there is an unwillingness or no possibility, prior to and during the legal process of the customer redressing the non-payment of the home loan instalments.
- 81 I set out below the steps that Standard Bank adopts in respect of defaulting debtors in order to avoid a sale in execution if at all possible.
- 82 As a first step, if a customer defaults on a home loan, Standard Bank generally seeks to assist the customer to rehabilitate the home loan account.
- 83 A customer usually has the ability to do this from the moment they are in arrears right up until shortly before a sale in execution of the property is due to take place.
- 83.1 Standard Bank defines early stage delinquency as all accounts that have missed less than two of the required monthly payments/instalments. These collections are handled in-house.
- 83.2 Standard Bank defines late stage delinquency as all accounts that have missed two or more of the required monthly payments/instalments. These accounts are outsourced to selected collections agents.



- 84 Before Standard Bank issues summons in respect of a home loan, its representatives make multiple attempts at communicating and interacting with the customer.
- 85 Customers are also encouraged to contact Standard Bank if they find themselves in financial difficulty.
- 86 Whenever a customer falls into arrears and has not contacted Standard Bank, Standard Bank acts quickly to contact the customer in an effort to persuade him/her to settle the arrears.
- 87 In Standard Bank's experience, it is in this early stage that rehabilitation of a distressed account is most successful.
- 88 When a customer shows an unwillingness or inability to enter into a rehabilitation programme, and if there are no other means to rehabilitate the home loan account, the way forward will be determined having regard to the customer's profile and the nature of the security for the home loan.
- 89 Among the options available to the customer is the use of Standard Bank's "EasySell" programme.
- 90 This is a programme designed to assist customers to sell their property through a private sale and thereby to settle their home loan.

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- 91 A dedicated team within Standard Bank advertises the property to a database of buyers, or via property agencies, newspapers and websites.
- 92 Where customers sell their property through EasySell, Standard Bank deducts up to 10% of what is owed on the home loan.
- 93 Standard Bank also allows customers to include some of the ordinary upfront costs of a property sale – such as rates, taxes, levies and electrical compliance certificate costs – in the loan balance, and to pay off any shortfall (i.e. any difference between the sale price and the outstanding amount on the home loan) over five to ten years, interest-free.
- 94 On average, a customer is given a minimum of 6 months to either settle the arrears or enter into a payment arrangement, before legal proceedings are instituted.
- 95 By this time, the customer would generally have missed a minimum of 5 to 6 monthly instalments – but often more.
- 96 I must emphasise that litigation is only generally considered once the other avenues of rehabilitation described above have failed.
- 97 Even once legal proceedings commence, the customer is still given the opportunity to rehabilitate.

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98 In Standard Bank's experience it takes, on average, 29 months (2 years and 5 months) from the date of a debtor's default before Standard Bank sells a property in execution.

99 Moreover, for the reasons set out above, proceeding with sales in execution is the exception, not the norm, and occurs only when other avenues have been exhausted. Therefore, in the year ending December 2019:

99.1 Standard Bank obtained orders declaring immovable properties specially executable in respect of 1095 properties – that is in respect of 0.19% of its total home loans portfolio.

99.2 Of the 1095 cases, the sales in execution proceeded in only 335 cases, that is approximately 31% of the 1095 relevant cases.

99.3 By contrast the vast majority of matters were resolved before the sale took place, because in the face of the prospect of a sale in execution, debtors took action:

99.3.1 In 185 cases (approximately 17% of the matters), the sales in execution were cancelled because the debtor paid the arrears amount or because the debtor entered into a payment arrangement with Standard Bank;

99.3.2 In 212 cases (approximately 19% of the matters), the sales in execution were cancelled as the debtor opted to sell the property privately;

